

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

AUG 24 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of 1994)
Annual Access Tariff Filings) CC Docket No. 94-65
)

**REPLY COMMENTS
OF SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company (SWBT) hereby responds to the Comments filed by MCI Telecommunications, Inc. (MCI) on August 8, 1994, on SWBT's Petition for Clarification or Reconsideration. MCI provides no reason to deny SWBT's request for the Commission to clarify that petitions for waiver are not required to allow for exogenous cost treatment of items included under Section 61.45(d)(1)(vi).¹

I. PETITIONS FOR WAIVER ARE NOT NEEDED FOR COSTS TO BE TREATED AS EXOGENOUS, PURSUANT TO SECTION 61.45(d)(1)(vi).

MCI asserts that a rulemaking or waiver is necessary to declare costs as exogenous, stating that

[t]he notice and comment provisions associated with both rulemakings and waivers ensure that all interested parties have an opportunity to debate the merits of exogenous treatment. The tariff process, in contrast, places the onus on interested parties to identify the tariff, review the exogenous claim, and file a petition within 15 days.²

MCI misses the real point of any debate over exogenous treatment: exogenous cost issues are issues over required or allowed rate

¹ 47 C.F.R. Section 61.45(d)(1)(vi).

² MCI Comments at p. 3.

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changes. Parties (other than price cap carriers) can be "interested" in such a debate only to the extent that it affects rates that could be charged to that party. The tariff process protects such parties by allowing them to comment before such rate changes can become effective. No party is denied due process in such a proceeding.

MCI claims that SWBT is in error when it stated that the Depreciation Order³ cited by the Commission in support of its decision did not contain any discussion of whether the petition for waiver was the required method to raise the question of exogenous treatment. Having made this claim, however, MCI is unable to quote any such discussion from the Depreciation Order. Thus, the Depreciation Order can provide no support for the Bureau's denial of exogenous treatment in this case.

MCI attempts to create an endogenous predetermination rule by stating:

There is no logical basis for distinguishing between costs previously denied exogenous treatment (e.g., depreciation expenses) and those costs not specifically granted exogenous treatment to date (e.g., "other extraordinary exogenous changes as the Commission shall permit or require.")⁴

MCI reasons incorrectly that these two categories of costs are similar and both require endogenous treatment unless and until the Commission deems otherwise via a rulemaking or the granting of a

³ Petition for Waiver of the Commission's Rules to Recover Network Depreciation Costs, 9 FCC Rcd 377 (1993) (Depreciation Order).

⁴ MCI at p. 3 (emphasis original).

waiver. Section 61.45(d)(1)(vi), however, is meant to address requests for exogenous cost treatment of extraordinary and uncontrollable costs that have not been previously considered.

The "special circumstances" and "good cause" requirements of a waiver request should not apply to exogenous requests where there has been no previous Commission decision. Such requirements are relevant only when there is a request to deviate from an established rule reflecting a previously decided issue. Under Section 61.45(d)(1)(vi), there is no need to request a waiver to allow a price cap carrier to file for exogenous cost treatment for a cost for which exogenous/endogenous treatment has not been specifically addressed in the past. This rule allows for the request to be made in a tariff filing, therefore, there is no rule to be waived.

Interestingly, in a separate section of MCI's comments, MCI supports AT&T's repeated request to treat equal access expenses as exogenous, costs that the Commission has already ruled are endogenous. Even though MCI claims that requests for exogenous treatment should be made in a "rulemaking or waiver" proceeding, it conveniently ignores the fact that it and AT&T requested exogenous treatment for equal access expenses not in a rulemaking or waiver proceeding, but in the tariff proceeding on the local exchange carriers' 1994 Annual Access Tariff filings.

II. AT&T'S APPLICATION FOR REVIEW SHOULD BE DENIED.

In the section of MCI's comments supporting the AT&T application for review, MCI fails to note that AT&T's key issue, that equal access expenses should be treated exogenously, was raised by MCI on reconsideration of the LEC Price Cap Order⁵ and rejected there. MCI's comments thus merely "re-argue" a point already decided against it.

In an unrelated proceeding, MCI recently claimed that a LEC's application for review should be denied as

seeking a second bite of the apple. The Commission previously considered [the LEC's] argument and rejected it [The LEC] should not be permitted to re-argue its case in an Application for Review of a delegated authority item.⁶

If MCI is unwilling to give others a "second bite" through the use of an Application for Review, it should not complain when its own voracious appetite for "re-argument" is unsatisfied.

⁵ Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786 (1990) (LEC Price Cap Order).

⁶ MCI Opposition to Application for Review, filed In the Matter of GTE Operating Companies Revision to FCC Tariff No. 1, Transmittals Nos. 873, 874, 893, CC Docket No. 94-81, on August 10, 1994, at p. 2.

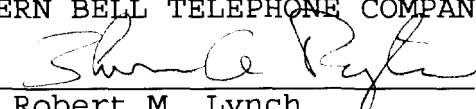
III. CONCLUSION

For the foregoing reasons, SWBT respectfully requests that its Petition for Clarification or Reconsideration be granted and that AT&T's Application for Review be denied.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By


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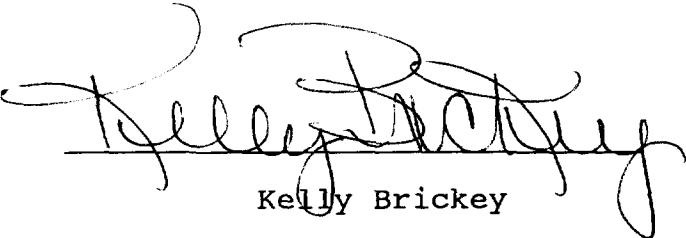
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August 24, 1994

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Reply Comments of Southwestern Bell Telephone Company", has been served this 24th day of August, 1994 to the Parties of Record.



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August 24, 1994

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